

6 246A087

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

ROBERT J. CORBER

(202) 429-8108

15042

Filed 1425

SEP 3 1986 3 15 PM

INTERSTATE COMMERCE COMMISSION

September 3, 1986

No.

SEP 3 1986

Date

Fee \$ 10.00

ICC Washington

Ms. Noreta R. McGee  
Secretary

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

SEP 3 1986 3 15 PM

15042

REGISTRATION NO. Filed 1425

SEP 3 3 07 PM '86  
MOTOR OPERATING UNIT  
ICC OFFICE OF  
THE SECRETARY

Dear Ms. McGee:

Enclosed are the original and two copies of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents consist of a Conditional Sale Agreement, a primary document dated August 1, 1986, and a concurrently executed Assignment.

The names and addresses of the parties to the documents are as follows:

Conditional Sale Vendor  
and Assignor:

North Western Leasing Company  
One North Western Center  
165 North Canal Street  
Chicago, Illinois 60606

Purchaser:

Dakota, Minnesota & Eastern  
Railroad Corporation  
337 22nd Avenue  
Brookings, South Dakota 57006

Assignee:

Chicago and North Western  
Transportation Company  
One North Western Center  
165 North Canal Street  
Chicago, Illinois 60606

The equipment consists of 18 used Model GP-9 locomotives identified by the railroad marks and numbers listed in

*Robert J. Corber*  
*S. Corber*

Ms. Noreta R. McGee

September 3, 1986

Page 2

Schedule A to the Conditional Sale Agreement. The serial numbers of these locomotives are, respectively: 19506, 19507, 19499, 19500, 19501, 19504, 19505, 20687, 20688, 20689, 20690, 18227, 18223, 18224, 18225, 18226, 17408 and 17409.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the person presenting this letter with enclosures for recordation.

A short summary of the document to appear in the index follows:

Conditional Sales Agreement between North Western Leasing Company, One North Western Center, 165 North Canal Street, Chicago, Illinois 60606, and Dakota, Minnesota & Eastern Railroad Corporation, 337 22nd Avenue, Brookings, South Dakota 57006, dated August 1, 1986 and covering 18 locomotives; and

Assignment between Northwestern Leasing Company, One North Western Center, 165 North Canal Street, Chicago, Illinois 60606, and Chicago and North Western Transportation Company, One North Western Center 165 North Canal Street, Chicago, Illinois 60606, dated August 1, 1986 and covering 18 locomotives, and connected to the above-described Conditional Sales Agreement.

Very truly yours,



Robert J. Corber  
Counsel for Dakota, Minnesota  
& Eastern Railroad  
Corporation

Enclosures as stated

---

15042A

REGISTRATION NO. .... Filed 1425

SEP 3 1986 3 15 PM

INTERSTATE COMMERCE COMMISSION

**AGREEMENT AND ASSIGNMENT**

**Dated as of August 1, 1986**

**between**

**NORTH WESTERN LEASING COMPANY**

**and**

**CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY**

---

AGREEMENT AND ASSIGNMENT dated as of August 1, 1986, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (hereinafter called the Assignee) and NORTH WESTERN LEASING COMPANY (hereinafter called the Assignor).

WHEREAS, the Assignor and Dakota, Minnesota and Eastern Railroad Corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the sale and delivery on the conditions therein set forth, by the Assignor and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Assignor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Assignor hereby assigns and transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Assignor in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit is paid to the Assignor by the Assignee pursuant to Section 4 hereof;

(b) all the right, title and interest of the Assignor in and to the Conditional Sale Agreement (except the right to supply and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursements for taxes paid by the Assignor as provided in Article 5 thereof) and in and to any and all amounts which may be or become due or owing by the Railroad to the Assignor under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Assignor's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Assignor (except as otherwise provided in Section 3 hereof) for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Assignor to sell and deliver the Equipment or otherwise under the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Assignor to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Assignor. In furtherance of the foregoing assignment and transfer, the Assignor hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Assignor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but, except as otherwise provided in Section 3 hereof, as between the Assignor and the Assignee, at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Assignor agrees that it shall sell and deliver the Equipment in full accordance with the provisions of the Conditional Sale Agreement; and that notwithstanding this Assignment it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Assignor. The Assignor further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by any general mortgage of the Railroad, all of which the Assignor hereby agrees to cause to be released on or before the Closing Date [as defined in Article 4 of the Conditional Sale Agreement] for such unit; other than any Permitted Encumbrances [as defined in Article 12 of the Conditional Sale Agreement]; other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment); and the Assignor further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based

on claims originating prior to the delivery of such unit by the Assignor under the Conditional Sale Agreement, including those created by any general mortgage of the Railroad or any Permitted Encumbrances; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. Notwithstanding anything herein to the contrary, the Assignor agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Assignor will indemnify, protect and hold harmless the Assignee from and against all injuries, liabilities, claims, demands, costs, charges, expenses, losses or damages suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Assignor of any obligation with respect to the Equipment or the manufacture, construction, reconstruction, possession, purchase, delivery, installation, ownership, use, repair, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Assignor.

The Assignor agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on the Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Group (as defined in said Article 4) of Equipment, shall pay to the Assignor an amount equal to the aggregate Purchase Price of the units of Equipment in the Group as shown on the invoice therefor then being settled for which, under the terms of said Article 4(b) of the Conditional Sale Agreement, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in form and substance satisfactory to it and to its counsel, in such number of counterparts as may be reasonably requested:

(a) a bill of sale from the Assignor to the Assignee transferring to the Assignee all right, title and interest of the Assignor in the units of Equipment in the Group, warranting to the Assignee that at the time of delivery of

such units under the Conditional Sale Agreement the Assignor had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than any Permitted Encumbrances; other than those created by any general mortgage of the Railroad; other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment); warranting to the Assignee that on the date of such bill of sale such units were free of all claims, liens, security interests and other encumbrances created by any general mortgage of the Railroad which are prior or equal to the security interest of the Assignee in such units; and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Assignor under the Conditional Sale Agreement including Permitted Encumbrances and those created by any general mortgage of the Railroad;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group, as contemplated by Article 3 of the Conditional Sale Agreement in the form of Exhibit A hereto;

(c) an invoice of the Assignor for the units of Equipment in the Group for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of counsel for the Railroad dated as of the Closing Date, to the effect that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a legal, valid and binding instrument, enforceable in accordance with its terms, (ii) the Acknowledgement of Notice of Assignment (hereinafter called the "Acknowledgement") has been duly authorized, executed and delivered by the Railroad and, assuming due authorization, execution and delivery of this Assignment by the Assignee, is a legal, valid and binding instrument, (iii) the Assignee has a valid and perfected security interest in the units of the Equipment and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances arising by through or under Railroad (other than any Permitted Encumbrances; other than those created by any general mortgage of the Railroad, all of which have been released; other than those created by the Conditional Sale

Agreement; and other than the rights of the Assignee under this Assignment), (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement, this Assignment or the Acknowledgement, or if any such approval is necessary, it has been obtained, (v) the Conditional Sale Agreement and this Assignment with the Acknowledgement have been duly filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 and, no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (vi) the Railroad is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation, the Railroad has duly qualified and is authorized to do business and is in good standing in each and every jurisdiction where the failure to qualify or to be in good standing would have a material adverse effect upon its financial condition, the condition of its business or the ownership of its property and assets.

(e) an opinion of counsel for the Assignor, dated as of such Closing Date, to the effect that (i) the Assignor is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation, the Assignor has duly qualified and is authorized to do business and is in good standing in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary and the Assignor has all requisite power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Assignor and, assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon the Assignor and enforceable against the Assignor in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Assignor and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Assignor and enforceable in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Assignor and is valid and effective to transfer the security interest of the Assignor in and to the units of Equipment to the Assignee, free from all



claims, liens, security interests and other encumbrances of any nature (other than any Permitted Encumbrances, other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement) arising from, through or under the Assignor, (vi) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Assignor adversely relating to or affecting the execution and delivery by the Assignor of the Conditional Sale Agreement and this Assignment or the enforceability thereof and hereof in accordance with their respective terms or requiring any approval of its stockholders in respect thereof or hereof, and (viii) neither the execution and delivery of the Conditional Sale Agreement or this Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof, will conflict with or result in a violation of, or constitute a default under, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any instrument to which the Assignor is now a party or by which it is bound; and

(f) a certificate of an officer of the Railroad dated as of such Closing Date, to the effect that no Event of Default, or event which with the lapse of time and/or demand or giving of notice would constitute an Event of Default under the Conditional Sale Agreement shall have occurred and is then continuing and no tax liens (including, without limitation, tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment.

In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 4, and the last paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and general principles of equity (regardless of whether the proceeding is considered to be an action at law or in equity).

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in

clause (d) or (e) of Article 16 of the Conditional Sale Agreement or if any other Event of Default, or any event which with the lapse of time and/or demand or giving of notice would constitute an Event of Default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for the Group, the Assignee shall reassign to the Assignor, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment.

In addition, Assignee and Assignor shall provide Railroad prior to the Closing Date with an opinion of counsel for the Assignee and Assignor dated as of such Closing Date to the effect that:

(i) each of the Assignment and the Conditional Sale Agreement have been duly authorized, executed and delivered and each is a legal, valid and binding instrument, enforceable in accordance with its terms;

(ii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement and the Assignment, or if any such approval is necessary, it has been obtained;

(iii) each of the Assignor and the Assignee is a fully organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation, the Assignee and the Assignor have been duly qualified and each is authorized to do business and is in good standing in each and every jurisdiction where the failure to qualify or to be in good standing would have a material adverse effect upon its financial condition, the conduct of its business or the ownership of its property and assets.

SECTION 5. The Assignee may assign all or any of its rights hereunder and under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Assignor hereby:

(a) represents and warrants to the Assignee, its successor and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and

delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Assignor is concerned, a legal, valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, successors and assigns, it will, subsequent to payment by the Assignee to such Assignor of the amounts required to be paid under Section 4 hereof, execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Assignor therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the internal laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

NORTH WESTERN LEASING COMPANY

BY   
Vice President

[CORPORATE SEAL]

ATTEST:

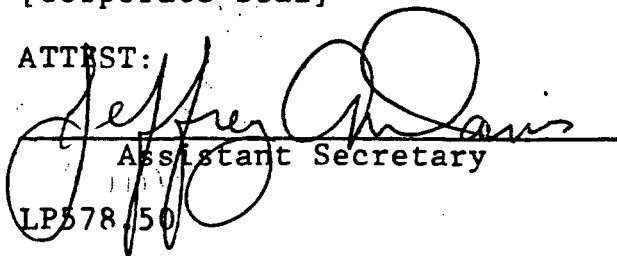
  
Assistant Secretary

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

By   
Vice President

[Corporate Seal]

ATTEST:

  
Assistant Secretary  
LP578,50

STATE OF ILLINOIS  
COUNTY OF COOK

)  
) SS.:

On this 3rd day of September 1986, before me personally appeared TATINOLFF, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH WESTERN LEASING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Marcia L. Bovenzi  
Notary Public

[Notarial Seal]

My Commission expires 9/12/87

STATE OF ILLINOIS  
COUNTY OF COOK

)  
) SS.:

On this 3rd day of September 1986, before me personally appeared TATINOLFF, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Marcia L. Bovenzi  
Notary Public

[Notarial Seal]

My Commission expires 9/12/87

**ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT**

DAKOTA, MINNESOTA & EASTERN RAILROAD COMPANY hereby  
acknowledges due notice of and consents to the assignment made  
by the foregoing Agreement and Assignment.

DAKOTA, MINNESOTA AND EASTERN  
RAILROAD COMPANY

By \_\_\_\_\_  
Vice President

LP578.50\*

Exhibit A

CERTIFICATE OF INSPECTION AND ACCEPTANCE

under

CONDITIONAL SALE AGREEMENT dated as of August 1, 1986 (the CSA) between North Western Leasing Company, and Dakota, Minnesota & Eastern Railroad Corporation (the Railroad). All terms used herein shall have the same meanings as are ascribed to them in the CSA.

The Railroad hereby certifies that each Item of Equipment set forth and described in Attachment A hereto has been delivered to the location indicated in Attachment A for each such Item, inspected by Railroad and accepted "AS IS" under the CSA, each on the date ("Acceptance Date") indicated in Attachment A for such Item.

DAKOTA, MINNESOTA & EASTERN  
RAILROAD CORPORATION

by \_\_\_\_\_

Title: \_\_\_\_\_

LP578.50

WARRANTIES AND REPRESENTATIONS  
OF  
DAKOTA, MINNESOTA AND EASTERN  
RAILROAD CORPORATION

---

1. Corporate Organization and Authority. The Railroad is a corporation duly organized, legally existing and in good standing under the laws of the State of Delaware; it has been duly qualified and is authorized to do business and is in good standing in each other jurisdiction where the failure to qualify or be in good standing would have a material adverse effect upon its financial condition, the conduct of its business or the ownership of its property and assets; and it has all requisite power and authority to own and operate its properties and to carry on its business as now conducted.

2. Agreements Valid and Binding. The Railroad has full right, power and authority to enter into and perform the Operative Agreements (as hereinafter defined) to which it is a party; the execution and delivery of the Operative Agreements by the Railroad and by the officers executing and delivering the same have been duly authorized by the Board of Directors of the Railroad and the Operative Agreements to which the Railroad is as party have been duly executed and delivered by the Railroad and (assuming due authorization, execution and delivery by the other parties thereto) constitute legal, valid and binding contracts enforceable in accordance with their respective terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect, and to the availability of equitable remedies).

3. No Violation. The execution and performance of the Operative Agreements by the Railroad will not violate any provisions of any law or any order of any court or governmental authority or agency and will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Certificate of Incorporation or By-Laws of the Railroad or any indenture or other agreement or instrument to which the Railroad is a party or by which it may be bound or result in the imposition of any liens or encumbrances on the Equipment (except (i) the liens of the Conditional Sales Agreement, and (ii) any liens on the interest of the Railroad in the CSA Equipment as purchaser under the Conditional Sale Agreement).



4. Governmental Approvals. No approval, consent or withholding of objection on the part of any governmental body, Federal, state or local, is necessary in connection with the execution and delivery of the Operative Agreements by the Railroad or compliance by the Railroad with any of the provisions of any of the Operative Agreements.

5. Pending Litigation. Except as set forth in Exhibit A attached hereto, on the date of the Certificate of which this attachment is a part: (a) there are no actions at law or in equity pending which, if determined adversely, would result in any material adverse change in the Railroad's ability to carry out its obligations under the Operative Agreements to which it is a party; and (b) there are no proceedings of any kind or nature pending before a Federal or state board or other administrative authority or agency which would result in any material adverse change in the Railroad's ability to carry out its obligations under the Operative Agreements to which it is a party.

6. No Existing Defaults. No Event of Default, as defined in the Conditional Sale Agreement, has occurred and is continuing and no event has occurred and is continuing which with the lapse of time and/or demand or the giving of notice would constitute an Event of Default as defined therein. The Railroad is not in default (for payment or otherwise) under any instruments, agreements or contracts of any kind under or subject to which there is outstanding indebtedness for borrowed money if the effect of such default or defaults is to accelerate the maturity of such indebtedness or to permit the holder or holders thereof, or any trustee or agent for such holders, to cause such indebtedness to become due and payable prior to its expressed maturity; and, to our knowledge, no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

7. Title. Subject to the following provision, no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Railroad now attaches or hereafter will attach to the CSA Equipment or in any manner affects or will affect adversely the right, title and interest of the Vendor or the security interest of the Assignee therein; provided, however, that such liens may attach solely to the interest of the Railroad in and to the CSA Equipment, as purchaser under the Conditional Sale Agreement.

8. Insurance. The CSA Equipment is covered by the insurance required by Article 9 of the Conditional Sale Agreement.

9. Operative Agreements. The term "Operative Agreements" shall mean collectively, the Conditional Sale Agreement and the Acknowledgement to the Assignment.

10. 15 U.S.C. Section 20. The Railroad, in the negotiation, execution and delivery of the Operative Agreements was not required by 15 U.S.C. Section 20 ("Clayton Act §10") and the regulations prescribed by the Interstate Commerce Commission in 49 C.F.R. Part 1010 (collectively, the "Clayton Act §10 Requirements") to comply with the Clayton Act §10 Requirements.

11. Corporate Charter. There is no condition, restriction or requirement in the documents constituting the corporate charter of the Railroad adversely relating to or affecting the execution and delivery by the Railroad of the Operative Agreements or the enforceability thereof in accordance with their respective terms or requiring any approval of its stockholders in respect thereof.

12. Violation of Law. Neither the execution and delivery of the Operative Agreements, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof, will conflict with or result in a violation of, or constitute a default under, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court of governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or by which it is bound.